

## DEPARTMENT OF EDUCATION

- CFDA 84.394 STATE FISCAL STABILIZATION FUND (SFSF) – EDUCATION STATE GRANTS, RECOVERY ACT (Education Stabilization Fund)**
- CFDA 84.397 STATE FISCAL STABILIZATION FUND (SFSF) – GOVERNMENT SERVICES, RECOVERY ACT**

### I. PROGRAM OBJECTIVES

The objectives of the SFSF - Education State Grants (Education Stabilization Fund) program are to support and restore funding for elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services in States and local educational agencies (LEAs). The objectives of the SFSF - Government Services program are to support public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education (IHEs), and for modernization, renovation, or repair of public school facilities and IHE facilities.

### II. PROGRAM PROCEDURES

The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) authorized the SFSF programs. States apply for funding from the Education Stabilization Fund and the Government Services program under a single application (Section 14002 of ARRA). To receive its initial SFSF allocation under these programs, a State submits an application to the Department of Education (ED) that provides (1) assurances that the State is committed to advancing education reform in four specific areas (increase teacher effectiveness and address inequities in the distribution of highly qualified teachers; establish and use a pre-K-through-college-and-career data system to track progress and foster continuous improvement; make progress towards rigorous college- and career-ready standards and high-quality assessments that are valid and reliable for all students, including limited English proficient students and students with disabilities; and provide targeted, intensive support and effective interventions to turn around schools identified for corrective action and restructuring), (2) baseline data that demonstrate the State's current status in each of the four education reform areas, (3) maintenance-of-effort information, and (4) a description of how the State intends to use its SFSF allocation.

SFSF funds for both programs are allocated to States in two phases. In Phase I, ED allocates 67 percent of a State's total SFSF allocation within 2 weeks of receipt of an approvable SFSF application. However, if a State demonstrates in its application that this amount is insufficient to prevent the immediate layoff of personnel by school districts, public IHEs, or State or local agencies, ED can award the State up to 90 percent of its total SFSF allocation in Phase I. If a State demonstrates an immediate need for additional Government Services funds, by submitting a letter to ED justifying the request, then ED may award the State up to 90 percent of its Government Services funds. The deadline for Phase I applications was July 1, 2009 (see the May 13, 2009 *Federal Register*, 74 FR 22530). In Phase II, the ED will allocate the remaining SFSF funds to a State after it submits an application addressing the requirements established in a *Federal Register* notice.

The application process and program structure for the Insular Areas differs from the process and program structure for the States. However, the general ARRA prohibitions on uses of funds and maintenance of effort (see III.G.2.1) requirements apply to the Insular Areas. The “Insular Areas” are Guam, American Samoa, U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands. Information on how the program differs for the Insular Areas is available on the Internet at: <http://www.ed.gov/programs/statestabilization/applicant.html>.

### **Source of Governing Requirements**

These programs are authorized by Title XIV of ARRA. Education Stabilization funds may be used for activities authorized by the Elementary and Secondary Education Act of 1965 (ESEA) (20 USC 6301 et seq.), the Individuals with Disabilities Education Act (20 USC 1400 et seq.), the Adult and Family Literacy Act (20 USC 1400 et seq.), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 USC 2301 et seq.), or for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system. However, other than the permissible uses of funds under those statutes, the applicable statutes and regulations for those programs (such as the prohibition of using Federal program funds to supplant funds from non-Federal sources) do not apply to SFSF funds (Section 14003(a) of ARRA).

### **Availability of Other Program Information**

Non-regulatory guidance for the SFSF programs (*Guidance on the State Fiscal Stabilization Fund Program – April 2009*) is available from links on the ED’s website at: <http://www.ed.gov/programs/statestabilization/applicant.html>

## **III. COMPLIANCE REQUIREMENTS**

**In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for details of the requirements.**

### **A. Activities Allowed or Unallowed**

1. *Allowable Activities - Education Stabilization Fund - States*
  - a. States shall use Education Stabilization funds:
    - (1) For support of elementary and secondary education and, as applicable, early childhood education programs and services to restore the amount of funds needed to bring the level of State support for the State’s fiscal years 2009, 2010, and 2011 to the greater of the fiscal year 2008 or 2009 level, using the state’s primary elementary and secondary funding formula(e), as described by the State in its application. Also, if a State enacted formulae increases to support elementary and secondary education

for the State's fiscal years 2010 and 2011 prior to October 1, 2008, these funds must be used to support such increases.

- (2) For support to IHEs to restore the amount of funds needed to bring the level of State support for the State's fiscal years 2009, 2010, and 2011 to the greater of the fiscal year 2008 or 2009 level, as described by the State in its application.
  - (3) If the Governor determines that the amount of Education Stabilization funds available is insufficient to support public elementary, secondary and postsecondary education at the required levels for fiscal years 2009, 2010, and 2011, the Governor must allocate those funds between those activities proportionally to the relative shortfall for each of these education sectors (Section 14002(a) of ARRA).
- b. Any remaining Education Stabilization funds must be used to provide LEAs in the State with subgrants based on their relative shares of funding under part A of title I of ESEA (20 USC 6311 et seq.) for the most recent year for which data are available (Section 14002(a)(3) of ARRA).
2. *Allowable Activities - Education Stabilization Fund - LEAs*
- a. LEAs may use Education Stabilization funds for any activity that is authorized under the following Federal education acts:
    - The Elementary and Secondary Education Act of 1965 (ESEA);
    - The Individuals with Disabilities Education Act (IDEA);
    - The Adult Education and Family Literacy Act; or
    - The Carl D. Perkins Career and Technical Education Act of 2006
  - b. To the extent consistent with State law, an LEA may use Education Stabilization funds for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system. Although ED encourages that any modernization, renovation or repair is consistent with a recognized green building rating system, this is not a requirement.
  - c. LEAs, (including charter school LEAs) have considerable flexibility in determining how best to use Education Stabilization funds. Because the amount of Education Stabilization funding that an LEA receives is determined strictly on the basis of formulae and ARRA gives LEAs considerable flexibility over the use of these funds, neither the Governor nor the SEA may mandate how an LEA will or will not use the funds. As stated above, an LEA may use these funds for activities authorized under

the ESEA. Because the ESEA includes the broad Impact Aid authority (see Title VIII of the ESEA), an LEA may use Education Stabilization funds for activities that would be allowable under Impact Aid. This flexibility applies to all LEAs that receive Education Stabilization funds, and is not limited to those LEAs that also receive Impact Aid funds.

Most funds that the ED awards under Impact Aid are considered to be general aid to LEAs. Thus, under the Impact Aid authority, an LEA may use Education Stabilization funds for educational purposes consistent with State and local requirements, subject to ARRA and other applicable Federal requirements, including the limitations discussed below.

Construction of new school buildings is an authorized activity under the Impact Aid construction program in section 8007 of the ESEA. Thus, subject to the ARRA statutory requirements and prohibitions governing the uses of Education Stabilization funds, an LEA (including a charter school LEA) may use the funds to support the construction of new school buildings, including construction activities that are consistent with a recognized green-building rating system.

Because an LEA may consider Education Stabilization funds to be available for any activity authorized under the Impact Aid program, the funds may be used to support both current expenditures and other expenses such as capital expenditures. Among other things, Education Stabilization funds may be used for activities such as: paying the salaries of administrators, teachers, and support staff; purchasing textbooks, computers, and other equipment; supporting programs designed to address the educational needs of children at risk of academic failure, limited English proficient students, children with disabilities, and gifted students; and meeting the general expenses of the LEA (Section 14003 of ARRA).

3. *Allowable Activities - Education Stabilization Fund - IHEs*
  - a. IHEs may use Education Stabilization funds for two purposes: (1) Education and general expenditures in such a way as to mitigate the need to raise tuition and fees for in-State residents; and (2) modernization, renovation, or repair of IHE facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green-building rating system. Although ED encourages that any modernization, renovation or repair is consistent with a recognized green building rating system, this is not a requirement (Section 14004 of ARRA).

- b. While neither the Governor nor the SEA may mandate how an LEA will or will not use the funds, this limitation does not apply to IHEs. For example, a Governor may restrict an IHE's use of funds to expenditures that would mitigate the need for increases in tuition and fees paid for by in-State students (Section 14004(a) of ARRA).

4. *Allowable Activities - Government Services*

- a. The Governor shall use Government Services funds for public safety and other government services, which may include assistance for elementary and secondary education and public IHEs. The Governor may also use Government Services funds for modernization, renovation, or repair of public school facilities and IHE facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system, subject to the requirements in ARRA. Although ED encourages that any modernization, renovation or repair is consistent with a recognized green building rating system, this is not a requirement. Governors are also permitted to use part of their Government Services funds to support administrative costs associated with implementing ARRA, including costs related to monitoring subgrantees and complying with the ARRA reporting requirements (Section 14002(b) of ARRA).
- b. Unlike the Education Stabilization Fund program, ARRA does not require Governors to use State funding formulae when awarding funds to LEAs, and they do not have to allocate Government Services funds proportionally with an LEA's share of funding under Part A of Title I of the ESEA. Government Services funds may be allocated to any entity for the broad range of public safety and other government services activities, including assistance to elementary and secondary education and public IHEs, and for modernization, renovation, or repair of public school facilities and IHEs' facilities .

The scope of allowable activities under the Government Services program is broad, and is not limited to modernization, renovation, or repair of public school facilities or IHEs. Subject to limitations in Section 14004(c) of ARRA (see paragraph 6.c below), Governors are permitted to use Government Services funds for construction and infrastructure support.

When providing funds to IHEs, the Governor cannot consider the type or mission of the institution, and must consider any IHE (as defined in section 101 of the Higher Education Act (HEA) of 1965 (20 USC 1001) for funding for modernization, renovation, and repairs within that State, as long as that institution continues to meet the eligibility requirements in the programs under title IV of the HEA (Section 14002(b) of ARRA).

5. *Allowable Activities - Education Stabilization Fund and Government Services*

Upon prior approval from the Secretary of ED, the State or LEA that receives SFSF funds may treat any portion of such funds that is used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program, including Part C of IDEA, administered by the Secretary (Section 14012(d) of ARRA).

6. *Unallowable Activities - Education Stabilization Fund and Government Services*

- a. SFSF funds cannot be used to provide financial assistance to students to attend private elementary or secondary schools, unless the funds are used to provide special education related services to children with disabilities as authorized by the IDEA (Section 14011 of ARRA).
- b. SFSF funds cannot be used to supplement or restore “rainy day funds,” as transferring SFSF funds to a rainy day fund does not constitute an obligation under 34 CFR section 76.707.
- c. No entity may use SFSF funds for:
  - (1) Maintenance of systems, equipment, or facilities;
  - (2) Modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other public events for which admission is charged to the general public; or
  - (3) Modernization, renovation, or repair of facilities used for sectarian instruction or religious worship, or in which a substantial portion of the functions of the facilities are subsumed in a religious mission (Section 14004(c) of ARRA).
- e. LEAs may not use SFSF funds for:
  - (1) Payment of maintenance costs;
  - (2) Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;
  - (3) Purchases or upgrades of vehicles;
  - (4) Improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities; or
  - (5) School modernization, renovation, or repair of that is inconsistent with State law (Section 14003(b) and (c) of ARRA).

- f. IHEs may not use SFSF funds for increasing their endowments (Section 14004(b) of ARRA).

7. *Unallowable Activities Applicable to Government Services*

Government Services funds cannot be used to pay down past debt. Government Services funds must be used for public safety and other government services, precluding the use of Government Services funds to pay down past debt (Section 14002(b)(1) of ARRA).

**D. Davis-Bacon Act**

All construction, modernization, renovation, and repair activities are subject to the Davis-Bacon Act (Section 1606 of ARRA).

**G. Matching, Level of Effort, Earmarking**

**1. Matching - Not Applicable**

**2.1 Level of Effort - *Maintenance of Effort (84.394)***

Under the Education Stabilization Fund program, a State is required to maintain its level of support for elementary and secondary education and for public IHEs. Those requirements are:

- (1) In each of fiscal years 2009, 2010, and 2011, the State will maintain State support for elementary and secondary education at least at the level of such support for fiscal 2006.
- (2) In each of fiscal years 2009, 2010, and 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support for fiscal year 2006 (Section 14005(d) of ARRA).

However, the Secretary of Education may waive or modify such requirements for fiscal years 2009, 2010, or 2011, if the Secretary determines the State will not provide a smaller percentage of the total revenues available to the State for elementary, secondary, and postsecondary education than that provided in the preceding fiscal year (Section 14012(b) and (c) of ARRA).

Nevertheless, the level of effort required by a State for the following fiscal year shall not be reduced (Section 14012(e) of ARRA).

**2.2 Level of Effort - *Supplement Not Supplant* - Not Applicable**

**3. Earmarking - Not Applicable**

**H. Period of Availability of Federal Funds**

Funds from both SFSF programs remain available for local obligation through September 30, 2011. With specific approval from ED, funds from both SFSF programs may be used to pay for pre-award costs to a specific date, no earlier than February 17, 2009 (Section 1603 of ARRA and 20 USC 1225(b)).